

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION-DETROIT

JAMES WARREN AMBERG,  
32121 Woodward Ave., Suite PH  
Royal Oak, MI 48073

Plaintiff,

v.

Complaint No.  
Hon.

UNITED STATES IMMIGRATION  
AND CUSTOM ENFORCEMENT,  
500 12<sup>th</sup> St., SW  
Washington, DC 20536

Defendant.

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James W. Amberg (P68564)  
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Royal Oak, MI 48073  
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**COMPLAINT**

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**NATURE OF ACTION**

1. Plaintiff James Amberg, an individual, brings this action against Defendant United States Immigration and Customs Enforcement ("ICE") to compel its compliance with the Freedom of Information Act ("FOIA"), 5 USC §552.
2. On September 9, 2019, the Plaintiff sought certain records from ICE pursuant to FOIA request seeking specific information regarding Homeland Security Operation No Vacancies.

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### **JURISDICTION AND VENUE**

3. The Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 USC §552(a)(4)(B).
4. The Court also has jurisdiction over this action pursuant to 28 USC §1331 and 5 USC §§701-706.
5. The Court has jurisdiction to grant declaratory relief pursuant to the Declaratory Judgment Act, 28 USC § 2201 *et seq.*
6. Venue is proper in this district pursuant to 5 USC §552(a)(4)(B) and 28 USC §1391(e).

### **PARTIES**

7. Plaintiff James Amberg is an individual whose place of business is located at 32121 Woodward Ave., Suite PH, Royal Oak, MI 48073.
8. As to the purpose of this case, Plaintiff is a Criminal Justice Act panel attorney appointed to represent defendant Darrick Bell, lead defendant in the Operation No Vacancies case currently taking place in the Eastern District of Michigan. See 17-20183, *United States v Bell, et al*
9. The purpose of the FOIA request in controversy is for investigative purposes, as a criminal defendant's ability to obtain discovery is limited to either relying on the Government to provide discovery or obtaining discovery in a limited way through FRCMP 17c.
10. Defendant ICE is an agency within the Department of Homeland Security and is headquartered at 500 12<sup>th</sup> St., SW, Washington, DC 20536.
11. ICE has a local field office located at 333 Mt. Elliott St., Detroit, MI 48207.

12. ICE is an "agency" within the meaning of 5 USC §552(f)(1), and is subject to the provisions of FOIA.

13. ICE is believed to have the records sought by the Plaintiff.

#### STATEMENT OF FACTS

14. On September 9, 2019, the Plaintiff submitted a FOIA request via email to ICE requesting the following:

"I am requesting all email, text message, and any other communication between Detroit Office HSI Special Agent Jeremy Forsys and any news media or other media organization involving the Victory Inn Sex Trafficking case opened on October 7, 2016. I represent, as cja appointed counsel, the lead defendant, Darrick Bell, in regards to this case. I am aware that Agent Forsys has made numerous statements in both local and national media regarding the case. I am also requesting a fee waiver as this information is for a public purpose." (See **Exhibit 1**, Email Chain with FOIA Request)

15. In response to this request, on September 13, 2019, ICE sent a return email to Plaintiff requesting he fill out a third-party consent form. (See **Exhibit 1; Exhibit 2**, Third-Party Consent Form)

16. On September 14, 2019, the Plaintiff responded to ICE's 9/13/19 email as follows:

"Good morning, given the nature of my request, I don't believe that I would need to file a third party form. My request involves a HSI Agent who is the lead agent in a federal case where I am appointed to represent the lead defendant. My request does not involve anything secret involving the investigation, as I am only requesting the communications that the Agent had with the media. Please let me know if ICE is rejecting my FOIA request, as I will then take the next necessary steps to obtain this information, as I have successfully done many times in the past. Jim Amberg" (See **Exhibit 1**)

17. Plaintiff never received a response to this email.

18. On September 21, 2019, Plaintiff sent ICE the following email:

"On 9/14/19 I replied to your email indicating that I did not believe I was required to file a third-party form, given the nature of my request. I

never received an answer from ICE to this email. If I don't receive any communication from ICE, I am going to assume that ICE is denying my FOIA. Please let me know either way, thank you. Jim Amberg" (See **Exhibit 1**)

19. On September 25, 2019, Plaintiff made a final attempt to discuss the FOIA request by calling the ICE FOIA number, 866-633-1182.
20. In calling this number, there was no operator and instead, the Plaintiff was informed to send an email to [ICE-FOIA@ice.dhs.gov](mailto:ICE-FOIA@ice.dhs.gov).
21. [ICE-FOIA@ice.dhs.gov](mailto:ICE-FOIA@ice.dhs.gov) was the email address of all of Plaintiff's emails sent to ICE.
22. Beyond ICE's 9/13/19 email, Plaintiff has received no other contact from ICE.
23. ICE has not provided Plaintiff with a case number in order for him to make an administrative appeal of his FOIA denial.
24. FOIA establishes deadlines by which federal agencies must respond to FOIA requests and release responsive documents. 5 USC §552(a)(6)(A)
25. A federal agency that is subject to FOIA and that receives a FOIA request must issue a determination within twenty (20) business days after receipt of the request. 5 USC §552(a)(6)(A)(i)
26. If the agency provides written notice to the requester explaining that "unusual circumstances" exist warranting additional time, the agency may be entitled to one ten (10) day extension to respond to the FOIA request. 5 USC §552(a)(6)(B)
27. Within the deadlines established by FOIA, an agency must notify the requester of whether the agency has determined to comply with a

request, and of the requestor's right to appeal an adverse determination.

5 USC 552(a)(6)(A)

28. As an "agency" within the meaning of 5 USC § 552(f)(1), ICE must comply with the non-discretionary statutory requirements of FOIA.
29. The applicable time period under FOIA for an agency to provide a response and determination is twenty working days as provided in 5 USC § 552(a)(6)(A)(i) or the applicable period, if timely and properly invoked, in 5 USC § 552(a)(6)(B)(i)-(ii).
30. Pursuant to 5 USC §552(a)(6)(A)(i), ICE was required to determine whether to comply with the FOIA Request within twenty (20) days (excluding Saturdays, Sundays, and legal public holidays) after receipt of that request and to notify Plaintiff of its determination, the reasons therefore, and the right to appeal any adverse determination unless ICE properly and timely invoked an extension under FOIA. See 5 USC §552(a)(6)(B)
31. To the extent that ICE received the FOIA Request on September 9, 2019, ICE was required to respond by October 4, 2019, unless ICE invoked such an extension.
32. To date, ICE has not responded to Plaintiff's FOIA request outside of the 9/13/19 email.

### **COUNT I**

(Violation of FOIA, 5 USC § 552)

33. Plaintiff re-alleges paragraphs 1 through 32 of this Complaint.
34. ICE failed to respond to the FOIA Request within the statutory deadlines

imposed by FOIA.

35. As a result, ICE violated Plaintiff's rights under FOIA, including but not limited to those set forth in 5 USC §552(a)(6)
36. As of the date of this Complaint, ICE has failed to release or produce any records in response to the FOIA Request, in violation of Plaintiff's rights under FOIA, including but not limited to those set forth in 5 USC § 552(a)(3)(A).
37. Plaintiff is entitled to injunctive relief compelling the release and disclosure of the requested records.
38. Plaintiff is being harmed by ICE's unlawful withholding of the requested records and will continue to be harmed until the records are released.
39. Plaintiff is entitled to declaratory relief that ICE has violated plaintiff's right under FOIA and that Plaintiff is entitled to receive all non-exempt records requested in the FOIA request.
40. Plaintiff is entitled to his reasonable attorneys' fees and other litigation costs under 5 US § 552(a)(4)(E).

#### **PRAYER FOR RELIEF**

FOR THESE REASONS, Plaintiff respectfully requests the Court:

- (a) Expedite consideration of this action, pursuant to 28 USC §1657;
- (b) Find and declare that ICE violated FOIA by failing to respond timely to the FOIA Request, by failing to follow the procedures required by FOIA, and by failing to disclose and release records in response to the FOIA Request;
- (c) Order ICE to conduct an adequate search for any and all records

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responsive to the FOIA Request, and require ICE to show that it employed search methods reasonably likely to lead to the discovery of the records responsive to the FOIA Request;

(d) Order ICE to produce and release all non-exempt records responsive to the FOIA Request within twenty (20) business days of the Court's order in this action and to provide Plaintiff with an index of any responsive records, material, or information withheld under claim of exemption;

(e) Enjoin ICE from continuing to withhold any and all non-exempt records responsive to the FOIA Request;

(f) Enjoin ICE from charging fees or costs for the processing of the FOIA Request (including any fees or costs for the search, review, and production of records);

(g) Award Plaintiff his reasonable attorneys' fees and other litigation costs in this action, pursuant to 5 USC §552(a)(4)(E); and

(h) Grant Plaintiff such other relief as the Court may deem just and proper.

Respectfully submitted,

/s/James W. Amberg  
AMBERG & AMBERG, PLLC  
James W. Amberg P68564  
Attorneys for Plaintiff  
32121 Woodward Ave., Suite PH  
Royal Oak, MI 48073  
248.681.6255  
248.681.0115 (fax)

Dated: October 11, 2019

# Exhibit 1



**From:** [James Amberg](#)  
**To:** "ICE-FOIA"  
**Subject:** is this a denial, please advice  
**Date:** Saturday, September 21, 2019 3:25:00 PM  
**Attachments:** [Jim Amberg.vcf](#)  
[Jim Amberg2.vcf](#)

On 9/14/19 I replied to your email indicating that I did not believe I was required to file a third-party form, given the nature of my request. I never received an answer from ICE to this email. If I don't receive any communication from ICE, I am going to assume that ICE is denying my FOIA. Please let me know either way, thank you. Jim Amberg



**From:** James Amberg  
**Sent:** Saturday, September 14, 2019 11:50 AM  
**To:** ICE-FOIA <[ICE-FOIA@ice.dhs.gov](mailto:ICE-FOIA@ice.dhs.gov)>  
**Subject:** RE: Form submission from: FOIA Request Form

Good morning, given the nature of my request, I don't believe that I would need to file a third party form. My request involves a HSI Agent who is the lead agent in a federal case where I am appointed to represent the lead defendant. My request does not involve anything secret involving the investigation, as I am only requesting the communications that the Agent had with the media. Please let me know if ICE is rejecting my FOIA request, as I will then take the next necessary steps to obtain this information, as I have successfully done many times in the past. Jim Amberg



**From:** ICE-FOIA <[ICE-FOIA@ice.dhs.gov](mailto:ICE-FOIA@ice.dhs.gov)>  
**Sent:** Friday, September 13, 2019 12:24 PM  
**To:** James Amberg <[jamberg@amberglaw.net](mailto:jamberg@amberglaw.net)>  
**Subject:** RE: Form submission from: FOIA Request Form

Dear Requestor,  
Please complete the attached Forms to enable the ICE Freedom of Information Act (FOIA) Office to respond to your request for information. When submitting, please clarify the records you are seeking. **Did you know...** that some records (such as entry/exit records, apprehensions at the border or point of entry, and travel records) to include [I-94 records](#), are only available from [Customs and Border Protection](#) (CBP)? – please contact them directly (see [CBP FOIA](#) and/or [I-94 records](#)); for [A-file](#) (Alien file) requests, or records regarding applications/petitions for relief, [benefits](#), [Asylees](#), [credible fear](#) and removal orders (these records reside in the A-file) please contact [USCIS](#): go to [USCIS FOIA](#) for more information. For visa records, go to [US DOS](#) and [Travel State.Gov](#) for assistance. For information regarding immigration court proceedings, contact the local [Office of Chief Counsel](#) (OCC).

Thank you,

ICE FOIA Office  
Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, S.W., Stop 5009  
Washington, D.C. 20536-5009

**From:** FOIA Request Form <[ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov)>  
**Sent:** Monday, September 09, 2019 4:26 PM  
**To:** ICE-FOIA <[ICE-FOIA@ice.dhs.gov](mailto:ICE-FOIA@ice.dhs.gov)>  
**Subject:** Form submission from: FOIA Request Form

*This email message contains user responses to your form in two formats. The first section is presented in a layout that is easy to read where the user's response to each question is displayed on the next line. In Section 2, MS Excel Friendly Format, you can export the table rows by "copy and paste" into an MS Excel spreadsheet where you can aggregate, sort and search your user's responses.*

**Submitted on:** Monday, September 9, 2019 - 16:25  
**IP Address:** 184.28.17.35

## Section 1 - Easy-to-Read Format

### Contact Information

**Name (First, MI, Last):** James W Amberg

**Address:** 32121 Woodward Ave. Ste PH

**City:** Royal Oak

**State:** Michigan

**Zipcode:** 48073

**Daytime Phone Number:** 2488429912

**Fax Number:** 2485659042

**Email:** [jamberg@amberglaw.net](mailto:jamberg@amberglaw.net)

**Describe the type(s) of document(s) you are requesting**

Enter company name, address, and any other information relevant to the request:

I am requesting all email, text message, and any other communication between Detroit Office HSI Special Agent Jeremy Fors and any news media or other media organization involving the Victory Inn Sex Trafficking case opened on October 7, 2016. I represent, as cja appointed counsel, the lead defendant, Darrick Bell, in regards to this case. I am aware that Agent Fors has made numerous statements in both local and national media regarding the case. I am also requesting a fee waiver as this information is for a public purpose.

Select a suitable description of yourself and the purpose of the request: A. An individual seeking information for personal use and not for commercial use. If the subject matter of your request is yourself, ICE staff may contact you to verify your identity.

Enter educational or scientific institution name:

Enter company/firm name:

Enter media company name:

Enter the maximum amount that you are willing to pay: Contact me if over \$200

## Section 2 - MS Excel Friendly Format

You can copy and paste the table rows below into an Excel Spreadsheet. Feel free to omit the first row if the columns exist in your spreadsheet already. Don't forget: the column headings map to the parenthetical statement at the end of each question in section 1.

Name (First, M, Last):	Address:	City:	State:	Zipcode:	Daytime Phone Number:	Fax Number:	Email:	Enter company name, address, and any other information relevant to the request:	Select a suitable description of yourself and the purpose of the request:	Enter educational or scientific institution name:	Enter company/firm name:	Enter media company name:	Enter the maximum amount that you are willing to pay:
James W Amberg	32121 Woodward Ave. Ste PH	Royal Oak	Michigan	48073	2488429912	2485659042	<a href="mailto:jamberg@amberglaw.net">jamberg@amberglaw.net</a>	I am requesting all email, text message, and any other communication between Detroit Office HSI Special Agent Jeremy Fors and any news media or other media organization involving the Victory Inn Sex Trafficking case opened on October 7, 2016. I represent, as cja appointed counsel, the lead defendant, Darrick Bell, in regards to this case. I am aware that Agent Fors has made numerous statements in both local and national media regarding the case. I am also requesting a fee waiver as this information is for a public purpose.	A. An individual seeking information for personal use and not for commercial use. If the subject matter of your request is yourself, ICE staff may contact you to verify your identity.				Contact me if over \$200

# Exhibit 2

*Freedom of Information Act Office*

**U.S. Department of Homeland Security**  
500 12<sup>th</sup> St SW, Stop 5009  
Washington, DC 20536



**U.S. Immigration  
and Customs  
Enforcement**

**AFFIRMATION/DECLARATION**

This is to affirm that

I, \_\_\_\_\_,  
(PRINT FULL NAME)

request access to records maintained by the Immigration and Customs Enforcement which pertain to me.  
My present address is:

my date of birth is: \_\_\_\_\_, and

my place of birth was: \_\_\_\_\_.

I understand that any knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to \$5,000. I also understand that any applicable fees must be paid by me.

I hereby authorize \_\_\_\_\_ access to my records.  
(PRINT FULL NAME)

I request that any located and disclosable records be forwarded to the following individual:

\_\_\_\_\_ at the following address:  
(PRINT FULL NAME)

I hereby declare or certify under penalty of perjury that the foregoing is true and correct.

Executed on \_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(SIGNATURE OF AFFIRMANT/DECLARANT).